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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,788	12/12/2003	Tommy Rodrigues	FDN-2824 (17017)	3477
Attn: William J. Davis, Esq. GAF MATERIALS CORPORATION Legal Dept., Building No. 10 1361 Alps Road Wayne, NJ 07470				
7590 02/25/2008				
EXAMINER				
RUDDOCK, ULA CORINNA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
02/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/734,788

**Applicant(s)**

RODRIGUES ET AL.

**Examiner**

Ula C. Ruddock

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-21 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed December 6, 2007. In view of Applicant's response, the previously set forth rejections in view of Kiik et al. (US 6,990,779) have been overcome. However, after an updated search, additional prior art has been found which renders the invention as currently claimed unpatentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Regarding claim 34, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

6. Claims 26-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tajima et al. (US 4,636,414) in view of Colarusso et al. (US 4,585,682). Tajima et al. disclose a laminated

roofing membrane comprising a fibrous sheet, first and second bituminous layers laminated on both surfaces of the fibrous sheet, a synthetic film laminated on the opposite surface of the first bituminous layer, and a mineral aggregate layer (i.e. granules) deposited on the opposite surface of the second bituminous layer (col 2, ln 62-68 to col 3, ln 1-3; Figures 1 and 4). The fibrous sheets usable in the present invention include nonwoven fabrics made of glass fiber (col 3, ln 50-55). The synthetic films can be polyvinyl chloride, polyester, or polyethylene films (col 4, ln 1-5). Tajima et al. disclose the claimed invention except for the teaching that a rubber polymer modified asphalt layer is between the nonwoven glass fabric and the organic film.

Colarusso et al. (US 4,585,682) disclose a roofing membrane laminate comprising a film layer and a foil layer that are joined together by an adhesive material (abstract, col 2, ln 41-60). The foil layer can be a nonwoven glass scrim material (col 7, ln 14-21). The laminate also contains a bituminous adhesive material that comprises asphalt and styrene-butadiene rubber (col 9, ln 49-51). It would have been obvious to one having ordinary skill in the art to have used Colarusso's bituminous adhesive material as an adhesive layer between Tajima's nonwoven glass fabric and synthetic sheet, motivated by the desire to create a roofing membrane that increased lamination strength and increased durability.

Regarding Applicant's limitation of an asphalt coating having a first melting temperature, an organic film having a second melting temperature, and a rubber polymer modified asphaltic adhesive having a third melting temperature, it is the Examiner's position that because the Tajima and Colarusso references disclose the same asphalt coating, the same organic film, and the

same rubber polymer modified asphaltic adhesive material as Applicant, the three different melting temperatures would obviously be present in the disclosures of Tajima and Colarusso.

Regarding claim 36, Tajima et al. and Colarusso et al. disclose the claimed invention except for the teaching that the polyester film is specifically a polyethylene terephthalate film. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used polyethylene terephthalate as the polyester film in the Tajima et al. and Colarusso et al. roofing material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have used polyethylene terephthalate, motivated by the desire to create a roofing material that high strength and increased abrasion resistance.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 26-41 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/  
Primary Examiner, Art Unit 1794